STATE OF MICHIGAN
IN THE 30TH CIRCUIT COURT
COUNTY OF INGHAM

FRANK HOUSTON, Chair, Oakland County Apportionment Commission, AND EDNA FREIER, CHRISTY JENSON, LORETTA COLEMAN, JIM NASH, DAVID RICHARDS, AND ERIC COLEMAN,

Plaintiffs,

v

RICK SNYDER, GOVERNOR OF THE STATE OF MICHIGAN, AND OAKLAND COUNTY BOARD OF COMMISSIONERS,

Defendants.

No. 12-10-~~MZ~~ CZ

HON. WILLIAM E. COLLETTE

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STIPULATION TO ENTRY OF CIRCUIT COURT'S OPINION AS FINAL ORDER OF THE COURT

On February 15, 2012, the Circuit Court entered an Opinion in the above-captioned case granting Plaintiffs' motion for summary disposition and denying Defendants' motions for summary disposition.

Accordingly, the parties stipulate that the Court shall now enter an Order adopting the Opinion of the Court as its final order and declaring that the same fully adjudicates all of the rights and liabilities of the of the parties in this action and closes this case with the Court.

Nothing contained herein shall waive Plaintiffs' right to request costs and/or attorney's fees pursuant to Const. 1963, art 9, §32.

It is so stipulated:

For Plaintiffs: Date:

Mary Ellen Gurewitz (By CMG w/permission) February 17, 2012

For Defendant Snyder:

February 17, 2012

Christina M. Grossi

For Defendant Oakland County:

(By CMG w/permission) February 17, 2012

Andrea Hansen

ORDER

At a session of the Court, held in the 30th Judicial Circuit Court, Ingham County, on the 21st day of Feb, 2012.

PRESENT: WILLIAM E. COLLETTE
CIRCUIT COURT JUDGE

This matter having come before this Court upon stipulation of the parties and the Court being otherwise fully advised in the matter:

IT IS HEREBY ORDERED that the Opinion of the Court dated February 15, 2012, is hereby entered, and shall now serve as, the final Order of the Court in this matter and fully adjudicates all of the rights and liabilities of all of the parties in this action and closes this case with the Court.

IT IS SO ORDERED.

W E Collette

William Collette
Circuit Court Judge

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT FOR INGHAM COUNTY

FRANK HOUSTON, Chair, Oakland County Apportionment Commission, and EDNA FREIER, CHRISTY JENSON, LORETTA COLEMAN, JIM NASH, DAVID RICHARDS, and ERIC COLEMAN,

Plaintiffs,

v

RICK SNYDER, Governor of the State of Michigan, and OAKLAND COUNTY BOARD OF COMMISSIONERS,

Defendants.

OPINION

12-10-CZ

HON. WILLIAM E. COLLETTE

At a session of said Court
held in the city of Mason, County of Ingham,
this 15th Day of February 2012.

PRESENT: HON. WILLIAM E. COLLETTE

This matter comes before the Court on Plaintiffs' Motion for Summary Disposition pursuant to MCR 2.116 (C)(10), and Defendants' cross Motions for Summary Disposition pursuant to MCR 2.116(C)(10). The Court, being fully advised in the premises, **GRANTS** Plaintiffs' Motion and **DENIES** Defendants' Motions.

FACTS

Upon completion of the 2010 decennial census all eighty three (83) Michigan counties, including Oakland County, began apportioning county commission districts pursuant to the County Apportionment Act. In every county in Michigan the five person apportionment commission

consists of various county officials and the chairs of the two major parties. Following Oakland County's completion of its apportionment plan a petition for review was filed with the court of appeals; on November 15, 2011 the court of appeals affirmed the apportionment plan. The court of appeals findings were not appealed to the Michigan Supreme Court; therefore, the apportionment plan was set to be in place for the next decade. However, on November 29, 2011, House Bill 5187 was introduced to amend the County Apportionment Act. HB 5187 expeditiously cleared the house and senate and was signed into law by Defendant Governor Snyder on December 19, 2011 as 2011 PA 280.

2011 PA 280 primarily makes two changes to the County Apportionment Act. First, it reduces the maximum number of county commissioners any county can have from thirty-five (35) to twenty-one (21).[1] Secondly, it requires counties with a population in excess of 1,000,000 with an optional unified form of government, and an elected county executive to use its county board of commissioners as its apportionment commission rather than the apportionment commission. Counties are required to come into compliance with this act no later than April 27, 2012. It is undisputed that as of April 27, 2012 Oakland County will be the only county that this amendment applies to in the entire state.[2] Furthermore, it has been conceded that there is no possible way that any other county would come into the purview of this amendment by April 27, 2012 as there will not be another decennial census completed by that date.

DISCUSSION

I. STANDARD OF REVIEW

A motion for summary disposition under MCR 2.116(C)(10) is proper when "there is no

[1] Under 2011 PA 280 a county would have to have a population over 50,000 to be allowed to have the maximum 21 commissioners.
[2] Oakland County is the only county with more than 21 commissioners, with a population in excess of 1,000,000, which has adopted an optional unified form of government, and has an elected county executive.

genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). In *Smith v Globe Life Insurance Co*, 460 Mich 446, 454-55; 597 NW2d 28 (1999), the Michigan Supreme Court stated:

> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties . . . in the light most favorable to the party opposing the motion.
>
> In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420: 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.*

In determining whether a genuine issue of material fact exists, the Court asks "whether the kind of record which might be developed, giving the benefit of reasonable doubt to the opposing party, would leave open an issue upon which reasonable minds might differ." *Skinner v Square D Co*, 445 Mich 153, 162; 516 NW2d 175 (1994).

II. ANALYSIS

A. Presumption of Constitutionality

The Court must begin its analysis by noting that a statute that is properly enacted is presumed constitutional "unless its unconstitutionality is clearly apparent." *McDougall v Schanz,* 461 Mich 15, 24; 597 NW2d 148 (1999); citing *Johnson v Harnischfeger Corp,* 414 Mich 102, 112, 323 NW2d 912 (1982); *People v Bricker,* 389 Mich 524, 528, 208 NW2d 172 (1973). The burden of proving a statute unconstitutional falls upon the party challenging its validity. *People v Gregg,* 206 Mich App 208, 210; 520 NW2d 690 (1994); citing *Caterpillar, Inc v Dep't of Treasury,* 440 Mich 400, 413, 488 NW2d 182 (1992); *People v Trinity,* 189 Mich App 19, 21, 471 N.W2d 626 (1991). Therefore, this Court begins by presuming that 2011 PA 280 is constitutional.

B. Local Acts Prohibition

Article 4, Section 29 of Michigan's Constitution prohibits local acts, and specifically provides that:

> The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. No local or special act shall take effect until approved by two-thirds of the members elected to and serving in each house and by a majority of the electors voting thereon in the district affected. Any act repealing local or special acts shall require only a majority of the members elected to and serving in each house and shall not require submission to the electors of such district.

There are two requirements to prevent a statute from running afoul of Const 1963, art 4, § 29's prohibition against local acts. The first part of the inquiry is "whether [the] population [requirements of the statute] ha[ve] a reasonable relation to the purpose of the statute." *City of Dearborn v Wayne Co Bd of Supervisors*, 275 Mich 151, 155; 266 NW 304 (1936). Secondly, the act must be "open ended;" in other words, "it shall apply to all other municipalities if and when they attain the statutory population." *Id* at 156.

As Plaintiff correctly points out, the most recent case to interpret the local act prohibition was *State of Michigan v Wayne County Clerk*, 466 Mich 640; 648 NW2d 202 (2002). There, the legislature had passed a statute that required any city with a population in excess of 750,000, as determined by the most recent decennial census, and a nine member city council that elects its members at large to place on its August 6, 2002 ballot whether or not council members should be elected by district. *Id.* The court found that the statute violated the local act prohibition due to the fact that it was not open ended. *Id.* The court pointed out that there would not be another decennial census for another decade; at the time of the most recent census Detroit was the only city to meet the requirements of the statute, and therefore, Detroit would be the only city to meet the statute's requirements on August 6, 2002. *Id.* The Supreme Court in *Wayne*, however, made it clear that the test is whether "it is possible that other municipalities or counties can qualify for inclusion if their

populations change." *Id* at 642. In other words, the "probability or improbability of other counties or cities reaching the statutory standard of population is not the test..." to determine whether or not a law violates the local act prohibition. *Dearborn,* 275 Mich at 157.

2011 PA 280 is closely analogous to *Wayne.* Here, it is undisputed that the effective date of the act is March 27, 2012 and that the statute requires the second apportionment to take place within thirty (30) days thereafter; i.e. April 27, 2012. By that date there is *no* other county that will meet the statute's requirements. As in *Wayne*, the population requirement is based on the most recent decennial census and another will not be conducted prior to April 27, 2012; meaning there is no possible way another county will be required to comply with 2011 PA 280 by that time. While it is highly speculative that any other county would ever meet the requirements of 2011 PA 280, the Court does not concern itself with such speculation as that is not the test. *Id.* Furthermore, no speculation is required as no county will meet the requirements by April 27, 2012.

Defendant Oakland County argues that it is possible that any county with a population over 600,000 could, under the unamended County Apportionment Act, choose to increase the amount of its commissioners beyond the twenty one (21) allowed prior to the effective date of 2011 PA 280; however, this is not possible as explained below.[3] There are three (3) counties, other than Oakland County, that have a population in excess of 600,000 as of the last decennial census that could therefore qualify under the unamended County Apportionment Act to increase its commissioners beyond the twenty one (21) that 2011 PA 280 would prohibit, and therefore, would make 2011 PA 280 applicable to more than just Oakland County.

Kent County meets the 600,000 population requirement. However, pursuant to 1966 PA

[3] Even though it would be counterproductive to do so as 2011 PA 280 would require any county increasing its commissioners beyond twenty one (21) to reduce it upon the effective date of the statute. However, this Court must address this issue due to the fact the probability of whether or not another county will qualify under the statute shall not be considered by this Court. *Dearborn,* 275 Mich at 157

261, the Kent County apportionment commission prepared its plan within sixty (60) days of the publication of the census; Kent County's plan maintains its number of commissioners at nineteen (19). Furthermore, pursuant to MCL 46.408 this plan will be in place until the next decennial census and may not be changed. Therefore, there is no way 2011 PA 280 could apply to Kent County by the effective date of the act.

Macomb County had a population in excess of 600,000 as of the most recent decennial census. Macomb is a charter county, and is organized pursuant to the County Home Rule Act, MCL 45.504. The County Home Rule Act requires that the charter provide the number of commissioners the county will have; Macomb County's charter provides for thirteen (13). MCL 45.514. To increase the number of commissioners beyond thirteen (13) it would have to amend its charter. The procedure to amend Macomb's charter is described in § 10 therein, and requires that amendments be proposed by petition of registered electors or adopted by two thirds of the commissioners. Next, the proposed amendment must be submitted to the electors at the next general election, and then if approved it becomes effective forty-five (45) days after certification of the election. As Plaintiffs properly point out, even if an amendment to Macomb's charter had been proposed at the time 2011 PA 280 was enacted (December 2011), and approved at the next general election on February 28, 2012, it would not be effective by the effective date of 2011 PA 280. Therefore, there is no possible way for Macomb County to come within the purview of 2011 PA 280 by its effective date of March 28, 2012.

Finally, Wayne County had a population in excess of 600,000 as of the most recent decennial census and is also a charter county; its charter provides for fifteen (15) commissioners. Wayne County would also have to amend its charter to add more commissioners. Its charter provides that amendments be proposed by the board of commissioners or a citizen's initiative.

Subsequently the amendment must be approved by the county electors. Wayne County adopts by reference the procedures set forth in the state constitution, Const 1963, art 12, § 1, regarding legislative amendments. Like Macomb, amendments to Wayne County's charter must be approved by the voters at the next general election and changes do not take effect until forty-five (45) days after the election. The next general election would not occur until February 28, 2012 and would therefore not be effective by the effective date of 2011 PA 280, March 28, 2012.

In sum, there is no conceivable scenario under which 2011 PA 280 will be applicable to any county other than Oakland by the time it becomes effective. Therefore, the Court finds that 2011 PA 280 is not open ended and therefore violates Const 1963, art 4, § 29's prohibition against local acts.

C. Headlee Amendment/Unfunded Mandates

Const 1963, art 9, § 29, commonly referred to as the Headlee Amendment, provides that:

> The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs.

The Michigan Supreme Court has interpreted the Headlee Amendment to prohibit the legislature from placing two independent burdens on local government. *Adair v State,* 486 Mich 468, 478; NW2d 119 (2010). First, the state may not reduce the amount of funding appropriated for an activity that it requires local units of government to perform. *Id.* Second, it prohibits the state from requiring a local unit of government from performing a new activity or service without also funding such activity or service. *Id.* The first prohibition has been called the "maintenance of support" provision, and the second has been called the "prohibition on unfunded mandates" provision. *Id.*

As to the prohibition on unfunded mandates, the *Adair* court further explained that "before the state imposes a new or increased activity or service on a local unit of government, it must appropriate funds to cover any necessary increased costs." *Id* at 479. Here, Plaintiff's allege that 2011 PA 280 violates the prohibition on unfunded mandates provision of the Headlee Amendment.

Plaintiff argues that since 2011 PA 280 requires Oakland County to reapportion its already completed apportionment the state must fund the reapportionment.[4] More specifically, Plaintiff alleges that the first apportionment was budgeted approximately $77,000 for software and technical support; the apportionment also required substantial time commitments from county staff. Defendants do not dispute the fact that reapportionment will indeed come at some cost to Oakland County.

Defendants argue reapportioning the districts is not a "new activity" for Headlee purposes, and therefore, Headlee does not apply. Defendant points out that the prohibition on unfunded mandates "is only triggered by a mandate that requires local units to perform an activity that the state previously did not require local units to perform *or* at an increased level from that previously required of local units." *Judicial Attorneys Ass'n v Michigan,* 460 Mich 590, 606-607; 597 NW2d 113 (1999) (emphasis added). Defendant goes on to argue that this is not a new activity; the County Apportionment act already required it. However, there is no question that apportioning Oakland County twice increases the level of activity previously required of the local unit of government. Prior to the enactment of 2011 PA 280 Oakland County only had to apportion once; an activity it had concluded, and therefore, the passage of 2011 PA 280 did in fact increase what was required of it.

Defendants also point out the fact that Oakland County still has the rights to the software and that the staff is already trained in its use. Therefore, Defendants argue, the actual cost of the

[4] 2011 PA 280 does not set aside any funding for Oakland County to conduct a reapportionment.

reapportionment will likely not exceed $8,000. Defendants fail to point out any case law that sets a dollar limit on Headlee's application; therefore the Court rejects this argument as any amount of extra costs to Oakland County could presumably violate Headlee according to its language and the case law interpreting it.

For purposes of the Headlee Amendment, the reapportionment required by 2011 PA 280 is an unfunded mandate that requires Oakland County to perform apportionment at an increased level than previously required. Therefore, 2011 PA 280 violates the Headlee Amendment.

D. Judicial Review of Reapportionment

The County Apportionment Act, at MCL 46.406, requires that electors be given thirty (30) days in which to petition the court of appeals for judicial review of an apportionment. 2011 PA 280 will not go into effect until March 28, 2012 and Oakland county has thirty (30) days from then to complete its reapportionment; therefore, the deadline for reapportionment placed upon Oakland County is April 27, 2012. Plaintiff argues that due to the fact that candidates must file by May 15, 2012, 2011 PA 280 violates MCL 46.406 as voters would not have the requisite thirty (30) days to file their petition seeking judicial review of the reapportionment. Defendants counter by pointing out that Oakland County has already adopted a resolution requiring that a reapportionment plan be in place by March 28, 2012, giving voters enough time to seek judicial review. However, this Court is not free to ignore a statute, MCL 46.406, because a local unit of government has passed a resolution in an attempt to get around an obvious timing issue that is created by the enactment of 2011 PA 280. Furthermore, even if Oakland County were to abide by its own resolution it would still be free to amend its reapportionment until April 27, 2012 which would result in a MCL 46.406 violation as well. In other words, Oakland County is asking the Court to take it at its word that it will finish its reapportionment by its own deadline and not amend it so that it can avoid any MCL

46.406 violations. It appears as though the legislature acted so swiftly that it failed to consider the MCL 46.406 timing requirements for judicial review, and then Oakland County made a failed attempt to correct the oversight by passing this resolution. Therefore, the Court finds that 2011 PA 280 would violate the right to petition for judicial review of the reapportionment.

III. CONCLUSION

2011 PA 280 violates Const 1963, art 4, § 29's prohibition on local acts, the Headlee Amendment's prohibition on unfunded mandates, and Oakland County voters' rights to petition for judicial review of the reapportionment pursuant to MCL 46.406. There being no genuine issues of material fact, Plaintiffs are entitled to Summary Disposition pursuant to MCR 2.116(C)(10).

THEREFORE IT IS ORDERED that Plaintiffs' Motion for Summary Disposition is **GRANTED.**

IT IS FURTHER ORDERED that Defendants' Motions for Summary Disposition are **DENIED.**

Plaintiff shall prepare and file an appropriate order conforming to this opinion with the Court within ten (10) days of entry of this opinion, or this opinion will become the order of the Court.

Hon. William E. Collette
Circuit Court Judge

PROOF OF SERVICE

I hereby certify that I mailed a copy of the attached **OPINION AND ORDER** upon each attorney of record, or upon the parties, by placing the true copy in a sealed envelope, addressed to each, with full postage prepaid and placing said envelope in the United States mail at Mason, Michigan, on February 15th, **2012**.

David Matelski
Law Clerk

APPORTIONMENT OF COUNTY BOARDS OF COMMISSIONERS (EXCERPT)
Act 261 of 1966

***** *46.401 THIS SECTION IS AMENDED EFFECTIVE MARCH 28, 2012: See 46.401.amended* *****

46.401 County apportionment commission; apportionment of county into county commissioner districts.

Sec. 1. Within 60 days after the publication of the latest United States official decennial census figures, the county apportionment commission in each county of this state shall apportion the county into not less than 5 nor more than 35 county commissioner districts as nearly of equal population as is practicable and within the limitations of section 2. In counties under 75,000, upon the effective date of this act, the boards of commissioners of such counties shall have not to exceed 30 days into which to apportion their county into commissioner districts in accordance with the provisions of this act. If at the expiration of the time as set forth in this section a board of commissioners has not so apportioned itself, the county apportionment commission shall proceed to apportion the county under the provisions of this act.

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1968, Act 153, Imd. Eff. June 13, 1968;—Am. 1969, Act 137, Eff. Mar. 20, 1970.

2

APPORTIONMENT OF COUNTY BOARDS OF COMMISSIONERS (EXCERPT)
Act 261 of 1966

***** *46.402 THIS SECTION IS AMENDED EFFECTIVE MARCH 28, 2012: See 46.402.amended* *****

46.402 Number of county commissioners based on county population.

Sec. 2.

County Population	Number of Commissioners
Under 5,001	Not more than 7
5,001 to 10,000	Not more than 10
10,001 to 50,000	Not more than 15
50,001 to 600,000	Not more than 21
600,001 to 1,000,000	17 to 35
Over 1,000,000	25 to 35

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1969, Act 137, Eff. Mar. 20, 1970;—Am. 2004, Act 369, Imd. Eff. Oct. 11, 2004.

APPORTIONMENT OF COUNTY BOARDS OF COMMISSIONERS (EXCERPT)
Act 261 of 1966

***** *46.403 THIS SECTION IS AMENDED EFFECTIVE MARCH 28, 2012: See 46.403.amended* *****

46.403 County apportionment commission; membership; convening apportionment commission; adopting rules of procedure; quorum; action by majority vote; conducting business at public meeting; notice of meeting; availability of certain writings to public.

Sec. 3. (1) The county apportionment commission shall consist of the county clerk, the county treasurer, the prosecuting attorney, and the statutory county chairperson of each of the 2 political parties receiving the greatest number of votes cast for the office of secretary of state in the last preceding general election. If a county does not have a statutory chairperson of a political party, the 2 additional members shall be a party representative from each of the 2 political parties receiving the greatest number of votes cast for the office of secretary of state in the last preceding general election and appointed by the chairperson of the state central committee for each of the political parties. The clerk shall convene the apportionment commission and they shall adopt their rules of procedure. Three members of the apportionment commission shall be a quorum sufficient to conduct its business. All action of the apportionment commission shall be by majority vote of the commission.

(2) The business which the apportionment commission may perform shall be conducted at a public meeting held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(3) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1977, Act 185, Imd. Eff. Nov. 17, 1977.

APPORTIONMENT OF COUNTY BOARDS OF COMMISSIONERS (EXCERPT)
Act 261 of 1966

***** *46.401.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 28, 2012* *****

46.401.amended County apportionment commission; apportionment of county into county commissioner districts.

Sec. 1. (1) Within 60 days after the publication of the latest United States official decennial census figures, the county apportionment commission in each county of this state shall apportion the county into not less than 5 nor more than 21 county commissioner districts as nearly of equal population as is practicable and within the limitations of section 2.

(2) If a county is not in compliance with section 2 on the effective date of the amendatory act that added this subsection, the county apportionment commission of that county shall, within 30 days of the effective date of the amendatory act that added this subsection, apportion the county in compliance with section 2. For subsequent apportionments in a county that is apportioned under this subsection, the county apportionment commission of that county shall comply with the provisions of subsection (1).

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1968, Act 153, Imd. Eff. June 13, 1968;—Am. 1969, Act 137, Eff. Mar. 20, 1970;—Am. 2011, Act 280, Eff. Mar. 28, 2012.

3

APPORTIONMENT OF COUNTY BOARDS OF COMMISSIONERS (EXCERPT)
Act 261 of 1966

***** *46.402.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 28, 2012* *****

46.402.amended Number of county commissioners based on county population.

Sec. 2.

County Population	Number of Commissioners
Under 5,001	Not more than 7
5,001 to 10,000	Not more than 10
10,001 to 50,000	Not more than 15
Over 50,000	Not more than 21

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1969, Act 137, Eff. Mar. 20, 1970;—Am. 2004, Act 369, Imd. Eff. Oct. 11, 2004;—Am. 2011, Act 280, Eff. Mar. 28, 2012.

APPORTIONMENT OF COUNTY BOARDS OF COMMISSIONERS (EXCERPT)
Act 261 of 1966

***** *46.403.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 28, 2012* *****

46.403.amended County apportionment commission; membership; convening apportionment commission; adopting rules of procedure; quorum; action by majority vote; conducting business at public meeting; notice of meeting; availability of certain writings to public.

Sec. 3. (1) Except as otherwise provided in this subsection, the county apportionment commission shall consist of the county clerk, the county treasurer, the prosecuting attorney, and the statutory county chairperson of each of the 2 political parties receiving the greatest number of votes cast for the office of secretary of state in the last preceding general election. If a county does not have a statutory chairperson of a political party, the 2 additional members shall be a party representative from each of the 2 political parties receiving the greatest number of votes cast for the office of secretary of state in the last preceding general election and appointed by the chairperson of the state central committee for each of the political parties. In a county with a population of 1,000,000 or more that has adopted an optional unified form of county government under 1973 PA 139, MCL 45.551 to 45.573, with an elected county executive, the county apportionment commission shall be the county board of commissioners. The clerk shall convene the apportionment commission and they shall adopt their rules of procedure. A majority of the members of the apportionment commission shall be a quorum sufficient to conduct its business. All action of the apportionment commission shall be by majority vote of the commission.

(2) The business which the apportionment commission may perform shall be conducted at a public meeting held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(3) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1977, Act 185, Imd. Eff. Nov. 17, 1977;—Am. 2011, Act 280, Eff. Mar. 28, 2012.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

FRANK HOUSTON, Chair, Oakland
County Apportionment Commission

and

Edna Freier, Christy Jenson,
Loretta Coleman, Jim Nash,
David Richards and Eric Coleman,

Plaintiffs,

vs.

Rick Snyder, Governor
of the State of Michigan,

and

Oakland County Board of
Commissioners,

Defendants.
_____/

Civil Action No. 12-10-CZ
Hon. William E. Collette

AFFIDAVIT OF MICHAEL J. GINGELL

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

Michael J. Gingell, being first duly sworn, deposes and states as follows:

1. I am the Chairman of the Oakland County Board of Commissioners (the "BOC").

2. I have personal knowledge of the facts set forth herein.

3. After passage of 2011 PA 280, on behalf of the BOC, I directed a review of the current status and availability of the software used to create the county apportionment plan, licensing of said software, necessary computers and trained individuals to determine the costs associated with complying with 2011 PA 280 and the anticipated timeframe for doing so.

4. Because the software that was previously acquired to prepare the original apportionment plan remain useable under valid licenses, and the training and computers are already in place, the actual costs to the County would be minimal, likely not to exceed $8,000.00.

5. After passage of 2011 PA 280, on behalf of the BOC, I also directed a review of the cost savings that would accrue to the County from the reduction in the number of commissioners required by the statute. The actual cost savings that the County would realize beginning January 1, 2013 are substantial and significantly outweigh the minimal costs of complying with 2011 PA 280. Specifically, reducing the number of commissioners from 25 to 21 will result in more than $450,000.00 estimated savings over the two-year commission term commencing January 1, 2013. Annually, the estimated savings would be $225,000 to $250,000, based on $56,296 per commissioner for salary and benefits, plus costs for travel, insurance, mileage, etc. 2011 PA 280 would therefore save the County at least $2.5 million between January 1, 2013 and the next United States Census.

6. Accordingly, the costs associated with preparing the revised apportionment plan are easily offset by the amount the County will save as a consequence of 2011 PA 280.

7. Because time is of the essence, the BOC considered a Resolution on January 19, 2012 to immediately begin the process for county reapportionment consistent with 2011 PA 280. See attached Resolution.

8. The Resolution provides that pursuant to 2011 PA 280, the BOC shall serve as the County Apportionment Commission.

9. The BOC referred this matter to the BOC Oversight Committee to prepare a draft appropriation plan consistent with 2011 PA 280 no later than February 29, 2012.

10. The BOC intends to have a final apportionment plan consistent with 2011 PA 280 no later than March 28, 2012, the effective date of 2011 PA 280.

I declare that under penalty of perjury the foregoing is true and correct.

Michael J. Gingell

Subscribed and sworn to before me
this 26th day of January, 2012.

Notary Public, Oakland County,
Michigan
My Commission Expires: 5/19/2017
Acting in the County of Oakland

10309973.1

MISCELLANEOUS RESOLUTION #12006
BY: Michael J. Gingell
IN RE: Apportionment of the Oakland County Board of Commissioners

To the Oakland County Board of Commissioners
Chairperson, Ladies and Gentlemen:

WHEREAS Public Act 261 of 1966 provides for the apportionment of county boards of commissioners; and

WHEREAS PA 261 was amended by PA 280 of 2011, effective March 28, 2012; and

WHEREAS PA 280 revises the following pertinent provisions concerning county apportionment:

- Reduces from 35 to 21 the maximum number of county commission districts in any county;

- Limits the number of county commissioners to no more than 21 in a county with a population of more than 50,000;

- Revises the composition of the county apportionment commission in a county with:

  - a population greater than 1,000,000, and
  - an Optional Unified Form of County Government, and
  - an Elected County Executive.

In such a county, the apportionment commission shall be the county board of commissioners; and

WHEREAS the population and governmental framework of Oakland County comports with the criteria set forth in PA 280, and pursuant to § 2 requires the apportionment commission of an affected county to, within 30 days of the effective date of the statute, apportion the county; and

WHEREAS the remaining provisions of PA 261 of 1966 remain unchanged by PA 280 and are still in effect with respect to county apportionment in Oakland County; and

WHEREAS to comply with the time frames for county apportionment established by PA 280, as well as those that exist in the original statute (PA 261), it is necessary to begin the process for county apportionment prior to the March 28, 2012, effective date of PA 280.

NOW THEREFORE BE IT HEREBY RESOLVED that, pursuant to PA 280 of 2012, the Oakland County Board of Commissioners shall serve as the Apportionment Commission for Oakland County; and

BE IT FURTHER RESOLVED that the Chairperson of the Board of Commissioners shall serve as Chair of the Apportionment Commission and the County Clerk shall serve as its Clerk; and

BE IT FURTHER RESOLVED that this matter be referred to the Board of Commissioners Oversight Committee which is hereby directed to begin the business of apportionment of the Oakland County Board of Commissioners consistent with PA 280 of 2012. That business shall include but is not limited to:

- Adopting Rules of Procedure in consultation with the Department of Corporation Counsel and the County Clerk's Elections and Plat Engineering Divisions;
- Creating a draft plan for 21 County Commission districts;
- Providing appropriate opportunities for public input and review of the plan;
- Complying with all other provisions of PA 280 and PA 261.

BE IT FURTHER RESOLVED that the Board of Commissioners Oversight Committee shall complete a draft Apportionment Plan that complies with PA 280 of 2012 for review and comment no later than February 29, 2012.

Commissioner Mike Gingell,

District #3

Commissioner
District # 16

Commissioner
District # 19

Commissioner
District # 1

Commissioner
District # 9

Commissioner
District # 13

Commissioner
District # 6

Commissioner
District # 4

Commissioner
District # 2

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Westlaw

Not Reported in N.W.2d, 2005 WL 1651709 (Mich.App.)
(Cite as: 2005 WL 1651709 (Mich.App.))

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Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.
Titus MCCLARY, Frank Ross, Earl Wheeler, Dr. Comer Heath, Highland Park City Council, Highland Park Revitalization Group 10, L.L.C., Plaintiffs-Appellants,
v.
STATE GAMING CONTROL BOARD, Defendant-Appellee.

No. 253011.
July 14, 2005.

Before: NEFF, P.J., and SMOLENSKI and TALBOT, JJ.

[UNPUBLISHED]

PER CURIAM.

*1 Plaintiffs, who represent various interests that would like to establish casino gaming within the city limits of Highland Park, sought a declaratory judgment holding that 1997 PA 69 (Act 69), which amended the Michigan Gaming Control and Revenue Act,[FN1] was a local act unconstitutionally enacted without obtaining the approval of a majority vote of the electors in the district affected, as required by Const 1963, art 4, § 29. The trial court determined that Act 69 was a general act not subject to the provisions of Article 4, Section 29, and, consequently, upheld the validity of Act 69. Plaintiffs then appealed to this Court as of right. We affirm.

FN1. MCL 432.210 *et seq.*

The constitutionality of a statute is a question of law this Court reviews de novo. *McDougall v. Schanz,* 461 Mich. 15, 23; 597 NW2d 148 (1999). A statute is presumed to be constitutional unless its unconstitutionality is clearly apparent. *Id.* at 24. The party challenging a statute's constitutionality has the burden of proving its invalidity. *People v. Gregg,* 206 Mich.App 208, 210; 520 NW2d 690 (1994). Furthermore, whether the legislation "appears undesirable, unfair, unjust or inhumane does not of itself empower a court to override the legislature...." *Doe v. Dep't of Social Services,* 439 Mich. 650, 681; 487 NW2d 166 (1992).

Under Article 4, Section 29 of Michigan's Constitution, local and special acts cannot be enacted unless certain conditions are met. This section reads:

> The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. No local or special act shall take effect until approved by two-thirds of the members elected to and serving in each house and by a majority of the electors voting thereon in the district affected. Any act repealing local or special acts shall require only a majority of the members elected to and serving in each house and shall not require submission to the electors of such district. [Const 1963, art 4, § 29.]

Plaintiffs contend that, because no city other than Detroit can meet Act 69's definition of city, it is a local act under Article 4, Section 29, and could only be properly enacted by a two-thirds majority of both houses and a majority vote of the electors of the district affected. Because the voters of the district affected did not approve Act 69,[FN2] plaintiffs argue, this Court must invalidate it as unconstitutional. We disagree.

FN2. Plaintiffs concede that Act 69 was approved by a 3/4 vote of both houses, as is required to amend an initiated law. See Const 1963, art 2, § 9.

5

Act 69 amended an initiated law that appeared on the general election ballot of November 5, 1996, and which, after approval by Michigan voters, became effective on December 5, 1996.[FN3] Act 69, which was signed into law on July 17, 1997, defined the term 'city' as a "local unit of government other than a county which meets all of the following criteria: (i) Has a population of at least 800,000 at the time a license is issued; (ii) Is located within 100 miles of any other state or country in which gaming was permitted on December 5, 1996; (iii) Had a majority of voters who expressed approval of casino gaming in the city." 1997 PA 69; MCL 432.202(1). At the time Act 69 became effective and continuing to the present, the only local unit of government that has met the population requirement contained in Act 69's definition of the term 'city' is the City of Detroit.

> FN3. An initiated law becomes effective 10 days after the official declaration of the vote, see Const 1963, art 2, § 9, which occurred in this case on November 25, 1996. The petition was popularly know as Proposal E. As it appeared on the ballot, Proposal E stated:
>
> A Legislative Initiative to Permit Casino Gaming in Qualified Cities
>
> The proposed law would:
>
> 1. Permit up to three gaming casinos in any city that meets the following qualifications: has a population of 800,000 or more; is located within 100 miles of any other state or country in which gaming is permitted; and has had casino gaming approved by a majority of the voters in the city.
>
> 2. Establish a Gaming Control Board to regulate casino gaming.
>
> 3. Impose an 18% state tax on gross gaming revenues.
>
> 4. Allocate 55% of tax revenue to the host city for crime prevention and economic development; allocate remaining 45% of tax funds to state for public education.
>
> Should the proposed law be adopted? Yes (___) No (___).

*2 While a population classification will not be sustained where it is a manifest subterfuge, *Avis Rent-A-Car v. Romulus,* 400 Mich. 337, 345; 254 NW2d 555 (1977), the mere fact that a legislative act contains a population classification that limits the geographic application of the act does not necessarily make the act local or special, *Lucas v. Bd of Road Comm'rs,* 131 Mich.App 642, 652; 348 NW2d 660 (1984). On the contrary, an act "that contains a population requirement can be sustained as a general act if the statute is applicable whenever the population requirement is met and the population classification bears a reasonable relationship to the purpose of the statute." *Ace Tex Corp v. Detroit,* 185 Mich.App 609, 618; 463 NW2d 166 (1990). Our Supreme Court has clarified that the "probability or improbability of other counties or cities reaching the statutory standard of population is not the test of a general law." *Dearborn v. Bd of Supervisors,* 275 Mich. 151, 157; 266 NW2d 304 (1936). Instead, it must be assumed that other local units of government will be able to reach the population goal and other requirements. *Id.*

In this case, the population requirement appears to have a reasonable relationship to the stated purposes of establishing limited casino operations within Michigan and providing for public safety and economic development. By establishing a population requirement, the statute necessarily limits the number of casinos that may be developed. Furthermore, local governmental units with a population of 800,000 or more are likely to have the necessary infrastructure and capability to deal with the demands imposed upon their communities by the development of large scale casino gambling operations and may be in a position to better utilize

the economic development that coincides with the establishment of casinos. In addition, without a sufficiently large local population, the profitability of the casino operations may be impaired. Consequently, while we recognize that there are small communities that have successfully maintained casinos, we cannot say that Act 69's population requirement does not bear a reasonable relationship to the purposes of the statute.

Plaintiffs argue that, even if the statute's population requirement can be said to be reasonably related to the purpose of the statute, the additional requirement that the local unit of government be within 100 miles of a state or country that permitted gaming on December 5, 1996, effectively precludes some local governmental units from ever qualifying contrary to the rule as stated in *Dearborn, supra.* While it is true that the Court in *Dearborn* stated that the test of a general law based on population requires that it "apply to *all* other municipalities if and when they attain the statutory population," *Dearborn, supra* at 156 (emphasis added), the Court recently restated the rule from *Dearborn* as whether "it is possible that other municipalities or counties can qualify for inclusion if their populations change." *Michigan v. Wayne Co Clerk,* 466 Mich. 640, 642; 648 NW2d 202 (2002). The Court further explained that "where the statute cannot apply to other units of government, that is fatal to its status as a general act." *Id.* at 643. Thus, the rule is whether other municipalities can qualify should their populations reach the required level and not whether *every* municipality within the state could theoretically meet the requirements.[FN4]

> FN4. Under plaintiffs' interpretation of the rule, the legislature would never be able to address the needs of large population centers situated in unique geographic locations. This is not to say that some geographic limitations may be so unrelated to the purposes of the statute that they might, in combination with the population requirement, be "repugnant to the theory of a general law ...," *Dearborn, supra* at 158, but that is not the case here. The geographic limitation is consistent with the legislative purpose of establishing *limited* casino gaming and directly addresses the problems faced by border communities whose citizens are enticed across the border to partake of gaming opportunities presented by casinos in foreign jurisdictions.

*3 In this case, the 100-mile rule does not preclude every other unit of government from qualifying under the statute. Indeed, plaintiffs assert that Highland Park meets all of the requirements of Act 69's definition of city except the population requirement.[FN5] Thus, at least one other unit of government could qualify under Act 69, should its population ever reach 800,000.[FN6] Therefore, on its face, Act 69 is a general act not subject to the requirements of Const 1963, art 4, § 29.

> FN5. Highland Park is within 100 miles of Canada, a country that permitted gaming on December 5, 1996, and its electorate affirmatively voted to allow casino gaming on September 9, 2003.
>
> FN6. In addition, although we do not reach the question, we note that the rather broad definition of gaming within the statute, see MCL 432.202(x), could encompass games offered by several states bordering Michigan. Therefore, in addition to the numerous cities that are within 100 miles of Canada, there may be many other cities in southern and western Michigan that are within 100 miles of a neighboring state that permitted gaming on December 5, 1996.

Plaintiff also argues that, even if Act 69 were a general act on its face, it amended the initiative law, which was a local act, and, therefore, it must also meet the requirements applicable to a local act. We disagree.

An act amending a local act must meet the requirements of Const 1963, art 4, § 29. See *Attorney General v. Lindsay*, 221 Mich. 533; 191 NW 826 (1923). Thus, if the initiative law were a local act, then Act 69, as an amendment of the initiative law, would need to meet the requirements imposed by Article 4, Section 29. The initiative law, as adopted by the voters, defined the word city in substantially the same way as Act 69.[FN7] Therefore, for the same reasons noted above, the initiative law was not a local act.[FN8]

> FN7. The initiative defined the word city as "a local unit of government other than a county which meets all of the following criteria: (1) the city has a population of at least 800,000 at the time a license is issued; (2) the city is located within 100 miles of any other state or country in which gaming is permitted; and (3) a majority of the voters of the local unit of government have expressed approval of casino gaming in the city."

> FN8. Plaintiffs' contention that the preference contained within the initiative law somehow transform the law into a local act is also without merit. The preference is not a condition limiting the application of the law.

The trial court did not err when it determined that Act 69 was not a local act subject to the provisions of Const 1963, art 4, § 29.

Affirmed.

Mich.App.,2005.
McClary v. State Gaming Control Bd.
Not Reported in N.W.2d, 2005 WL 1651709 (Mich.App.)

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